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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/047,426

01/14/2002

Thaddeus Marshall

Marshall-5

2585

45722

7590

12/08/2008

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EXAMINER

RETTA, YEHDEGA

ART UNIT

PAPER NUMBER

3622

MAIL DATE

DELIVERY MODE

12/08/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/047,426	Applicant(s) MARSHALL, THADDEUS	
	Examiner Yehdega Retta	Art Unit 3622	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 August 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 45-48 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 45-48 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

This office action is in response to amendment filed August 25, 2008. Claims 45 and 46 have been amended and claims 47-48 have been added. Claims 45-48 are now pending.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 45 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 45 recites adding the *credit awarded* pertaining to the presence of the individual at the physical commerce location and the *credits awarded based on the connection* between the client and the network to a time points account associated with the individual”.

The claim recites calculating **an award of credits** based on the correlation between time of receipt of identification ... and calculating **time points accumulated** in the accumulation session ... The claim recites time points accumulated based on the connection not credit. It is unclear if the step of adding is for the credit awarded and the time points accumulated, since the claim does not recite credit accumulated for the accumulation session.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an

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international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claim 46 is rejected under 35 U.S.C. 102(e) as being anticipated by Williams (US 2002/0049631).

Regarding claim 46, Williams teaches enrolling an individual in a rewards program by obtaining individual profile information and storing said information at a program administrator location maintained by a program administrator; requiring identification of the individual at a physical commerce location maintained by a program participant, the identification being based on said stored information (see [0031]); commencing a physical commerce location accumulation session following the identification of the individual; recording physical commerce location information, including at least the time of day, day of week and information pertaining to purchases made at the physical commerce location during the physical commerce location accumulation session (see [0044]); forwarding said recorded physical commerce location information to the program administrator; updating the stored individual profile information at the program administrator location; calculating number of time points accumulated as a result of the physical commerce location accumulation session based on the stored individual profile information and a formula selected by the program participant (see fig. 2, 3, [0020] - [0023], [0029]-[0031], [0040] Williams teaches requiring identification of the individual once a connection to a participant resource has been established, the identification being based on said stored information; commencing an on-line accumulation session following the identification of the individual; recording on-line information, including at least the time of day, the day of the week and the duration of the on-line accumulation session, at a participant's location during the

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on-line accumulation session; forwarding said on-line recorded information to the program administrator; updating the stored individual information at the program administrator location; calculating the number of time points accumulated as a result of the on-line accumulation session based on the stored individual information and a formula selected by the participant (see [0029], [0030], [0043], [0044], [0049] and permitting redemption of the earned credits for items of value (see [0044]-[0051]).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 47 and 48 are rejected under 35 U.S.C. 103(a) as being unpatentable over Williams (US 2002/0049631) and further in view of Landesmann (US 2002/0052782).

Regarding claims 47 and 48, Williams does not teach wherein the formula for calculating number of time points accumulated includes awarding time points contingent on an interaction occurring *at a particular time of day or the duration of on-line accumulation session*.

Landesmann teaches wherein the viewer is provided incentive based on the time of the day, the day of the week and time of season (see [0238]-[0267]). It would have been obvious to one of ordinary skill in the art at the time of the invention to calculate the time points or credit of Williams contingent to an interaction at a particular time of day or duration of on-line accumulation session, as in Landesmann. One would be motivated to provide higher incentive rate on certain time of the day or certain days of the week to motivate users to view ads on the

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specific time or day, since advertisers pay more for advertising spots for specific time of the day or specific days of the week. It would have been obvious to one of ordinary skill in the art at the time of the invention to reward the viewer of Williams based on the amount of time spent viewing the ads in order to encourage the viewer to view more ads, as in Landesmann (see [0272])

Claim 45 is rejected under 35 U.S.C. 103(a) as being unpatentable over Marks et al. (US 2001/0034651) and further in view of Miller (US 2001/0037232).

Regarding claim 45, Marks teaches receiving identification information relating to an individual at a physical commerce location provided by an individual who is present at the physical commerce location (see [0015], [0016], [0027]- [0034]); correlating received identification information with stored identification information; recording the time of receipt of identification information; calculating an award of credits based at least in part on a correlation between the time of receipt of identification information and predetermined time criteria relating to the award of credits (see [0039]-[0043]); receiving identification information relating to the individual from a client upon the establishment of a connection between the client and a network resource; correlating received identification information with stored identification information; providing credits award for the session) and adding the time points accumulated pertaining to the presence of the individual at the physical commerce location and the credits awarded based on the connection between the client and the network to a time points account associated with the individual (see [0044]- [0052]). Marks does not explicitly teach commencing an accumulation session; monitoring the time of the accumulation session; calculating time points accumulated in

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the accumulation session, based at least in part on increasing amounts of credits based upon increasing the duration of the accumulation session, it is taught in Miller (see [0013], [0018], [0020]). Miller teaches receiving identification information relating to an individual from a client upon the establishment of connection between client and a network resource [0011], [0012],[0015], [0016], [0017]); calculating time points accumulated in a accumulation session and providing the credit based on the time period [0013], [0018], [0020]). It would have been to one having ordinary skill in the art at the time of the invention to provide Marks' benefits, for responding to ads, by calculating time points accumulated based on the session, as in Miller, in order to encourage consumer to take the time to view the advertisements.

Response to Arguments

Applicant's arguments filed August 25, 2008 have been fully considered but they are not persuasive.

Regarding claim 46, applicant argues that Williams failed to disclose "recording on-line information, including at least the time of day, the day of the week and *the duration of the on-line accumulation session*, at a participant's location during the on-line accumulation session".

Examiner would like to point out that the claim recites recording on-line information including **at least one of** time of day, the day of the week and duration of the on-line accumulation session at a participant's location. Since applicant is claiming in alterative format the prior art does not have to anticipate all the claimed limitations. Examiner also would like to point out that according to applicant disclosure "an interaction with content may be referred as a time points accumulation session" (see [0007]. Further the disclosure teaches " (u)pon receipt of

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information identifying the enrolled individual, the interaction will be recognized as an accumulation session. During an accumulation session, the individual may accumulate time points. The level of attention demonstrated by individuals during accumulation sessions or suitable proxies for attention may be measured and recorded. For example, the individual may be required to indicate attention by responding to prompts included as part of an interaction carried out by remote communications, such as computer based or telephone based interaction, by devices that are present in a physical commerce location that are designed to identify the individual, or otherwise”.

Williams also teaches as follows:

The POS system may also be part of an Internet based retail facility, such as a World Wide Web site of a retailer. The centralized incentive system stores individualized purchasing incentives in association with each customer or a class of customers eligible for them. When a customer is making a purchase at a POS station associated with a POS terminal in one of the plurality of POS systems, that customer's identification is communicated from the POS system to the centralized incentive system. POS systems located in unrelated retail stores may be enabled to communicate customers' identifications to the centralized incentive system. *Based upon the customer identification that it receives, the centralized incentive system determines for which incentives that customer is eligible.* The centralized incentive system performs processing to determine if the customer qualifies for incentives for which the customer is eligible.

Since in Williams the customer is interacting with the content during the transaction, same as applicant's, it is referred as a *time points accumulation session and once the customer click on the product to purchase, it is indicated attention by responding to prompts (purchase) included as*

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part of an interaction (transaction). Williams also teaches accumulation of customer's purchase selection over multiple shopping trips (date and time of transaction); the shopping history stored in database associated with the customer's identification (see [0041]). Therefore, contrary to applicant's assertion Williams teaches "recording on-line information, including at least the time of day, the day of the week and the duration of the on-line accumulation session, at a participant's location during the on-line accumulation session", based on formula selected program participant (customer qualifying action specification which contains an identification of incentive benefits given to the customer) (see [0047], [0051]).

Regarding claim 45, Applicant argues that Marks fails to disclose "calculating an award of credits based at least in part on a correlation between the time of receipt of identification information and predetermined time criteria relating to the award of credits." Applicant asserts that Marks fails to disclose any connection between a time of receipt of identification information and calculating an award of credit. Examiner respectfully disagrees. Marks teaches customer identified at a merchant location through different identification means. Marks further teaches when the customer at a terminal responses to an ad, response to the ad within the incentive program is recorded (see [0017]-[0021] and [0027] – [0034]). Therefore, same as applicant's invention Marks provides the incentive when the customer acts upon and ad at the merchant location (the predetermined time criteria is the time between a customer is identified and acts upon the ad).

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Yehdega Retta whose telephone number is (571) 272-6723. The examiner can normally be reached on 8-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eric Stamber can be reached on (571) 272-6724. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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/Yehdega Retta/

Primary Examiner, Art Unit 3622